

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

The Estate of Darrell W. Wilson,
deceased, by its Personal Representative,
DEANDREA TURNER,

Plaintiff,

Case No. 07-13134

v.

Hon. John Corbett O'Meara

U.S. CUSTOMS/BORDER
PATROL OFFICER DARRELL
LYLES (Badge #H000480),

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION
TO AMEND COMPLAINT AND DENYING
DEFENDANT'S MOTION TO DISMISS AS MOOT**

Before the court is Defendant's motion to dismiss, filed October 1, 2007. Plaintiff filed a response to Defendant's motion, as well as a motion to amend the complaint, on October 22, 2007. Defendant did not respond to Plaintiff's motion to amend the complaint.

Plaintiff's complaint alleges violations of 42 U.S.C. § 1983, which requires that the defendant act under color of state law. Defendant, a Customs and Border Patrol officer, acted under color of federal law in this case. Plaintiff contends that the allegations under § 1983 were made inadvertently. Plaintiff requests permission to amend the complaint pursuant to Fed. R. Civ. P. 15(a) to allege a claim pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) rather than § 1983.

Given the early procedural posture of this case and that Defendant has not alleged that he would be prejudiced, the court finds that leave to amend should be granted pursuant to Rule 15(a). See Foman v. Davis, 371 U.S. 178, 182 (1962). Accordingly, IT IS HEREBY

ORDERED that Plaintiffs' October 22, 2007 motion to amend is GRANTED.

IT IS FURTHER ORDERED that Defendant's October 1, 2007 motion to dismiss is DENIED AS MOOT.

s/John Corbett O'Meara
United States District Judge

Date: December 14, 2007

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, December 14, 2007, by electronic and/or ordinary mail.

sWilliam Barkholz
Case Manager